Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

MILAN CHEYOVICH; DIANA CHEYOVICH, individually and as Court Appointed Guardian for Daniel Milan Lucien Cheyovich Joye and Nicolas Marc David Cheyovich Joye, minors,

Petitioners,

v.

SAN MARINO SCHOOL DISTRICT; JOHN BEUGELMAN, a.k.a. Jacques Beuglemans, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

DIANA CHEYOVICH
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41PP

QUESTIONS PRESENTED FOR REVIEW

1. Are elderly grandparents,[1] who obtained legal and physical custody of their deceased daughter's two minor sons, both American and California citizens, living then with the grandparents in California, entitled to bring federal claims under the Federal Civil Rights Act, 42 U.S.C. sections 1983, 1985(2), 1985(3), 1986 and 1988, for their grandsons being kidnapped from their public schools, whose principals, administrators and teachers knew of their legal guardianship status, copies of such having been served them and their being warned of the possible kidnapping of their grandsons by their French citizen father, which school officials engineered, conspired with, planned and accomplished such kidnapping with the father, his private California attorney, and all of whom were further joined in such conspiracy of a cover-up, obstruction of justice, complicity, acts of perjury, falsification and manufacture of evidence, etc., with and by the grandparents first retained trial counsel, and the school district's own private and trial counsel, resulting in ongoing violations of the Hague Convention Treaty, numerous criminal statutes of the United States and California, plus preventing frustration and destroying familial relationship, direct contacts, visits, legal and private communication with their grandsons and the perfection of their and their grandsons' legal rights and claims, the grandparents also

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[1] Their ages being 78 & 70 when grandsons kidnapped; now 88 & 80.

QUESTIONS PRESENTED FOR REVIEW – Continued

being guardians ad litem in two state court actions and their federal court action?

2. Is a California Appeal Court's "NOT TO BE PUBLISHED DECISION," upholding a trial judge's reversal of a jury's judgment on only a negligence claim in favor of the grandparents for $1,400,000.00, to be given claim or issue preclusion per a Rule 12(b)(6) dismissal motion when not all named parties in the federal action were named in the state action, no federal claim issues nor conspiracies, etc., were tried in the state action, the federal action was abated until after the state court decision, and no procedural/substantive rights of due process or equal protection were accorded the grandparents via the judicial notice requested of the nonpublic appellate decision?

3. Do the California Statute of Limitations doctrines of (a) discovery of conspiracy facts and (b) the last overt act doctrine, suspend or toll such statute running while such conspiracies are ongoing/continuing?

LIST OF PARTIES

PETITIONERS:

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LIST OF PARTIES – Continued

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TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
LIST OF PARTIES	iii
TABLE OF CONTENTS	v
TABLE OF AUTHORITIES	vii
CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS	1
STATEMENT OF BASIS OF JURISDICTION	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN PETITION	2
STATEMENT OF THE CASE	2
ARGUMENT	6
1. PETITIONERS HAD PROPERLY AVERRED VIOLATION OF THEIR RIGHTS UNDER THE FEDERAL CIVIL RIGHTS ACT SECTIONS 1983, 1983(2), 1985(3), 1986 AND 1988, AS WELL AS OF THE CALIFORNIA CIVIL RIGHTS, UNRUH, ACT, CALIFORNIA CIVIL CODE SECTIONS 51-53 AND GOVERNMENT CODE SECTION 12948	6
2. NO LAW OF THE CASE NOR CLAIM OR ISSUE PRECLUSIONS APPLIED TO DISMISS PER RULE 12(b)(6) PETITIONERS' COMPLAINT, WHO WERE FURTHER DENIED BOTH PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF ANY EVIDENTIARY HEARING PER FEDERAL RULES OF EVIDENCE, RULE 201, ESPECIALLY SUBPART (E)	10

TABLE OF CONTENTS – Continued

Page

3. THE DISTRICT COURT AND THE NINTH CIRCUIT COURT OF APPEALS DELIBERATELY IGNORED AND FAILED, IF NOT REFUSED, TO APPLY THE CALIFORNIA LAW OF DISCOVERY OF FACTS OR THE LAST OVERT ACT DOCTRINE OF CONSPIRACY, EITHER WHICH NOT ONLY TOLLED THE ONE YEAR STATUTE OF LIMITATIONS ON PETITIONERS AND THEIR GRANDSONS' CLAIMS BUT FURTHER, ESTABLISHED THE VALIDITY OF PETITIONERS' CONSPIRACY AVERMENTS OF ALL THEIR CLAIMS 14

CONCLUSION 15

TABLE OF AUTHORITIES

Page

CASES:

Al-Kvazraji v. St. Francis College, 784 F.2d 505 9

Anthony v. Baker, 767 F.2d 657 (10th Cir. 1985)..... 8

Avitia v. Metro Club of Chicago, 924 F.2d 689 (7th Cir. 1991)..... 13

Bell v. City of Milwaukee, 498 F.Supp. 1339 (E.D.Wis. 1980) 8

Billings v. U.S., 57 F.3d 797 (9th Cir. 1995)..... 7

Brock v. Williams Enterprises of Georgia, Inc., 832 F.2d 567 (11th Cir. 1987)..... 13

Conley v. Gibson, 353 U.S. 41 (1957)..... 7

Crawford v. Houston, 396 F. Supp. 187 (S.S. Tex. 1974)..... 8

Delew v. Wagner, 142 F.3d 1219 (9th Cir. 1998), cert. den., 525 U.S. 1015 (1998)..... 7, 11

Fobbs v. Holy Cross Health Systems, 29 F.2d 1439 (9th Cir. 1994) 7

Franklin County Convention Facilities Auth. v. American Premier Underwriters, Inc., 240 F.3d 534 (6th Cir. 2001) 13

Haddle v. Garrison, 525 U.S. 489 (1998)..... 7, 8, 11

Humana, Inc. v. Forsyth, 119 S.Ct. 710 (1999) 11

Hutchins v. TNT/Reddaway Truck Lines, Inc., 939 F.Supp. 721 (N.D. Cal. 1996) 10

TABLE OF AUTHORITIES – Continued

Page

In re Hopkins, 146 F.3d 729 (9th Cir. 1998) 10

Karim-Panahi v. L.A. Police Dept, 839 F.2d 621 (9th Cir. 1988) 7

Kush v. Rutledge, 460 U.S. 719 (1983) 9

Leatherman v. Tarrant County Narcotics Intelligence & Coordination, 507 U.S. 163 (1993)..... 6

Mendocino Environment Center v. Mendocino County, 14 F.3d 457 (9th Cir. 1994)..... 9

Mercoid Corp. v. Mid-Continent Inv. Co., 320 U.S. 661 (1944).....10

Montana v. U.S., 440 U.S. 147, 99 S. Ct. 970, 59 L.Ed.2d 210 (1979).....10

O'Neal v. Garrison, 263 F.3d 1317 (11th Cir. 2001).....8, 11

Rizzo v. Goode, 423 U.S. 362 (1975) 8

Rode v. Dellarciprete, 845 F.2d 1195..... 8

Sanders v. Union Pac. R.R. Co., 190 F.3d 1080 (9th Cir. 1999).....12

Sea-Land Serv. v. Gaudet, 414 U.S. 573 (1974) 11

Taylor v. Gilmartin, 686 F.2d 1345 (10th Cir. 1982)..... 9

U.S. v. Frega, 179 F.3d 793 (9th Cir. 1999) 11

Ward v. Connor, 657 F.2d 45 (C.A. 4th Va., 1981), cert. den., 455 U.S. 907 (1982)..... 9

Wyatt v. Union Mortgage Co., 24 C.3d 773 (1974).....14

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONS

First Amendment to the United States Constitution 2, 9

Fourteenth Amendment to the United States Constitution 2

STATUTES AND RULES

18 U.S.C. sections 1631-1639 2

18 U.S.C. section 1965(a), et seq. 1

28 U.S.C. section 1331 1

28 U.S.C. section 1367 1

28 U.S.C. section 1391 1

42 U.S.C. section 1983 .....1, 2, 3, 7

42 U.S.C. section 1985(2).....1, 2, 3, 9

42 U.S.C. section 1985(3).....1, 2, 3, 8, 9

42 U.S.C. section 1986 .....1, 2, 3, 9

42 U.S.C. section 1988 .....1, 2, 3, 9

California Civil Code sections 51-53..... 4

FRAP, Rule 35(b)..... 1

FRCP, Rule 9(b)..... 6

FRCP, Rule 56 10

FRCP Rule 12(b)(6).....2, 9, 10

Fed. R. Evid. 201(c) and (e).....2, 5, 10

Government Code section 12948 4

Sup. Ct. R. 10(a) and (c)..... 1

TABLE OF AUTHORITIES – Continued

Page

Sup. Ct. R. 13(1) and (3) 1

OTHER AUTHORITIES

18 Moore's Federal Practice, Sec. 132.01, 132.02, et seq. (Matthew Bender 3rd ed.) 10, 13

CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS

The short orders from the Ninth Circuit Court of Appeals denying Petitioners' Appeal and Petition for Rehearing En Banc were not to be published and only their respective Docket Numbers identify them, No. 00-56905 and 00-56937.

STATEMENT OF BASIS OF JURISDICTION

1. Appeal Jurisdiction to the Ninth Circuit Court of Appeals was per 28 U.S.C. sections 1331, 1367, 1391, 18 U.S.C. sections 1965(a), et seq., and 42 U.S.C. sections 1983, 1985(2), 1985(3), 1986 and 1988.

2. Petition for Rehearing En Banc timely filed January 15, 2002, was FRAP, Rule 35(b), CR 35-1.

3. Order denying Petition for Rehearing En Banc, May 15, 2002 extended time to file this Petition for Certiorari with Petitioners being given through August 13, 2002 to file this Petition. SCR, Rule 13(1) and (3).

4. Basis of Jurisdiction and Considerations of Review per this Petition are SCR, Rule 10(a) and (c). The Ninth Circuit by its "NOT FOR PUBLICATION" Memorandum, and orders of denial "has so far departed from accepted and usual course of judicial proceedings, or sanctioned such departure by a lower court, as to call for an exercise of this Court's supervisory power" and "has decided important federal questions ... conflict[ing] with relevant decisions of this Court."

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN PETITION

FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

FEDERAL STATUTES

18 U.S.C. § 1631-1639

42 U.S.C. § 1983

42 U.S.C. § 1985(2)

42 U.S.C. § 1985(3)

42 U.S.C. § 1986

42 U.S.C. § 1988

TREATY – THE HAGUE CONVENTION ON CHILD ABDUCTION, ETC.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 12(b)(6)

FEDERAL RULES OF EVIDENCE

Rule 201(c) and (e)

STATEMENT OF CASE

Petitioners are two of four original plaintiffs, the other two plaintiffs being their minor grandsons, who filed on April 3, 1996, their verified complaint before the United States

District Court for the Central District of California, No. 96-2381 HLH (BQR) against a number of defendants for violations of their rights per the Federal Civil Rights Act, 42 U.S.C. sections 1983 through 1988. Defendants immediately moved for abstention of said complaint, although some defendants moved to dismiss, which motions were granted and not part of this petition. However, abstention was granted, awaiting the resolution of a state court action initiated by petitioners via their first trial counsel, Bigelow, Moore and Tyre, in Los Angeles Superior Court, Case GC 01040, which then had a trial date set for June 3, 1996. Petitioners' federal complaint alleged that on and after July 4, 1995 they discovered the conspiracies, fraud and collusion of the remaining defendants therein to obstruct justice before said federal court, to destroy their rights and the rights of their two minor grandsons of whom they were legal guardians and ad litem guardians in both said state action and their federal complaint.

The remaining defendants who awaited the reactivation of the federal complaint after the resolution of the state action were: The grandsons' French citizen father, Jacky Bernard Joye, who kidnapped them; Joye's private California attorney, Jacques Beugelmans, who directed, advised and assisted Joye in kidnapping said grandsons; petitioners' former state action trial attorneys, James A. Shalvoy, Franklin T. Bigelow, Jr., and their law firm, Bigelow, Moore and Tyre; the San Marino School District, the principal, Charles Johnson, Mary A. Meye, Perta Santley, Jeanne Lipps, teachers and school personnel. Petitioners had terminated their representation by Bigelow, Moore and Tyre in September 1995, after discovering on July 4-7, 1995 that they were conspiring against them to eliminate not just their state claims but their federal

civil right claims against said defendants as named in their federal complaint, which also included claims of violation of the California Unruh Act, said state's civil rights statute, Cal. Civ. Code sections 51-53 and Cal. Government Code section 12498. Their grandsons, Daniel and Nicholas, ages 12 & 8 at the time of their kidnapping as students for the school district's Huntington and Valentine Schools, had experienced the untold grief of their mother, Joan Cheyovich dying in her sleep in the spring of 1992, while all three were living with their grandparents, Milan and Diana Cheyovich. Their mother had a French Divorce and Custody Decree which granted her full custody to raise the minor sons in California, as they were U.S. and California citizens and all three had been abused by the father and former husband, Jacky Joye. Diana Cheyovich had obtained an order appointing her temporary legal guardian of said grandsons, who lived with her and Milan in San Marino, the same house in which they had lived with their mother for almost three years preceding her death.

Their federal complaint alleged that they were discriminated against by all said remaining defendants, due to the plaintiffs Montengerin Orthodox religious beliefs, practices and ethnic family origins, activities and upbringing, and that due to the Serbian, Yugoslavia's wars of so-called and charged "ethnic cleansing" said defendants conspired and collaborated together to have their grandsons kidnapped from them, taken and kept in France, precluding all contacts, communication and relationships with them, such relationships not only being familial but legal, as to the legal guardianship and ad litem guardian status which Diana Cheyovich occupied and held valid court orders; Jacky Joye had been served with all proper

notices but not only defaulted in contesting such guardianship proceedings, but had been in contact with the court's mediator and investigator who made a report recommending Diana's appointment as general guardian and Joye had further sent derogatory letters and communiques to the guardianship court, criticizing and castigating it for using it's jurisdiction over him and his sons.

The federal district court granted defendants' motion for abstention until the state court action was resolved. Such resolution came via a Not to Be Published decision from the California Court of Appeals, Second District, which affirmed the trial court's reversing a jury's verdict and judgment in the grandparents' favor of some $1.4 million dollars, and the eventual dismissal of all the grandparents and even their grandsons' claims on the basis that said grandsons were with their father and the grandparents could not have obtained permanent legal or physical custody of their grandsons beyond their school year which ended some three days after their kidnapping.

Upon such California appeal's court decision being final, when the State Supreme Court denied the grandparents' petition for Review a Hearing, said defendants remaining in the federal action moved for dismissal on the purported basis of law of the case and some forms of res judicata; defendant Beugelman also moved for dismissal that the claims against him had exceeded the one year California statute of limitations which he claimed was not tolled by any acts of his deception or fraud from not being discovered as a co-conspirator, aider, abettor and advisor to and in securing the grandsons' kidnapping; said defendants' motions were granted, no evidentiary nor due process or equal protection hearing granted nor held per Federal Rules of Evidence, Rule 201, especially subpart (e) thereof

regarding the issues of what was to be judicially noticed and applied from said appeal's court non-public decision.

The grandparents moved to amend their complaint seeking appropriate leave of court to do so, but their motion was denied almost perfunctorily. Their appeal to the Ninth Circuit followed, and their petition for re-hearing en banc.

In granting defendants' motions the federal court did so with prejudice, stating that these petitioners could not plead any federal civil rights claims and their claims on other grounds were barred/precluded by said California appeal's court decision as the law of the case. All of said district court's and the upholding granted thereof by the Ninth Circuit are egregiously contrary not only to the decisions of this Honorable Supreme Court, but the appropriate, controlling case decisions of the Ninth Circuit Court of Appeals.

ARGUMENT

1. PETITIONERS HAD PROPERLY AVERRED VIOLATION OF THEIR RIGHTS UNDER THE FEDERAL CIVIL RIGHTS ACT SECTIONS 1983, 1983(2), 1985(3), 1986 AND 1988, AS WELL AS OF THE CALIFORNIA CIVIL RIGHTS, UNRUH, ACT, CALIFORNIA CIVIL CODE SECTIONS 51-53 AND GOVERNMENT CODE SECTION 12948.

This Supreme Court has held in *Leatherman v. Tarrant County Narcotics Intelligence & Coordination*, 507 U.S. 163, 168 (1993) that except as provided in FRCP, Rule 9(b) there are no heightened rules of pleading, especially as to claims per the federal civil rights acts,

sections 1983, et seq., *Conley v. Gibson* 353 U.S. 41, 48 (1957) ("The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."

The Ninth Circuit's own case decisions of *Karim-Panahi v. L.A. Police Dept.*, 839 F.2d 621, 624 (9th Cir. 1988) holds that a claim is sufficient on nothing more than a bare allegation that an individual's official's conduct, actions, etc., conformed to official policy, custom, usage or practices under color of law. Further, in *Fobbs v. Holy Cross Health Systems,* 29 F.2d 1439, 1449 (9th Cir. 1994), plaintiffs can aver more than one conspiracy, multiple conspiracies, joint union of actions, efforts and ventures. Such multiple conspiracies include obstruction of justice, withholding or manufacture/presentation of false, contrived and deceptive evidence as part of a coverup, re: federal court claims and proceeding. *Delew v. Wagner,* 142 F.3d 1219, 1222 (9th Cir. 1994), cert. den., 525 U.S. 1015 (1998). *Delew* applies significantly to sustain petitioners sections 1983 and 1985(2) claims, but although cited to the Ninth Circuit in said appeal, such decision along with the aforesaid were ignored.

The district court's statement that petitioners could not join non-state actors under section 1983 claims is wholly erroneous. That Circuit's decision in *Billings v. U.S.,* 57 F.3d 797, 801 (9th Cir. 1995), holds that not only state employees acting under color of law, authority or title can be subject to section 1983 claims but so can both private individuals and even federal employees who act along with, in conjunction or conspiracy with, such state actors. See also this Court's decisions in *Haddle v. Garrison,* 525

U.S. 489 (1998); *Rizzo v. Goode,* 423 U.S. 362, 377 (1975). In *Haddle,* supra, this Court upheld section 1985(2) and 1985(3) claims of conspiracy to intimidate or retaliate against witnesses in federal court proceedings, etc. The petitioners' minor grandsons were kept in France and brainwashed by their criminally disposed father, were further illegally contacted and their attorney client and other privileges or confidentiality with their grandparents' legal guardians and ad litem guardians, prevented wholly, intimidated and obstructed from any communications or opportunities, let alone actualities, of contact with the grandparents and all their counsel they retained for them and said grandsons' federal claims. The San Marino School's attorneys conspired with the grandparents' and grandsons' initial attorneys, to obtain false declarations for the grandsons after being taken to France, where such grandsons' depositions were constantly disrupted by their father, the grandsons were unwilling to talk with the grandparents, in English or otherwise, although they had been able to converse fluently before in English with their California teachers and said grandparents, their cousins and Montenegrin family members. Such discovery of obstruction of justice and fraud averred against all defendants per said conspiracy are supported by the cases of *Rode v. Dellarciprete,* 845 F.2d 1195; *Anthony v. Baker,* 767 F.2d 657 (10th Cir. 1985); *Bell v. City of Milwaukee,* 498 F.Supp. 1339 (E.D.Wis. 1980); and *Crawford v. Houston,* 396 F.Supp. 187 (S.S. Tex. 1974). See also *O'Neal v. Garrison,* 263 F.3d 1317 (11th Cir. 2001), citing and following *Haddle,* supra, 525 U.S. 489.

Petitioners' grandparents had also averred viable and proper 1985(3) claims against all defendants. The animus class requirement under said section was properly met by

their averments of religious, ethnic and race origins discriminations and of their First Amendment Rights discriminations inflicted and perpetrated upon them by all defendants. *Taylor v. Gilmartin,* 686 F.2d 1345 (10th Cir. 1982) (Religious discrimination is actionable under 1985(3).); *Al-Kyazraji v. St. Francis College,* 784 F.2d 505, 514-18 (Even race classification as Caucasians are to be treated equally without regard to race or ethnicity.); *Ward v. Connor*, 657 F.2d 45 (C.A. 4th Va., 1981), cert. den., 455 U.S. 907 (1982) (Injuries suffered per conspiracy based upon membership in Unification Church stated class-based animus of 1985(3). See and Cf. *Kush v. Rutledge*, 460 U.S. 719, 103 S.Ct. 1483, 75 L.Ed.2d 412 (1983); and *Mendocino Environment Center v. Mendocino County,* 14 F.3d 457, 465 (9th Cir. 1994). Even if the district court had doubt as to such claims, petitioners should have been allowed leave to amend their complaint.

None of the defendants made any motions for a more definite statement, but only motions for dismissal per Rule 12(b)(6) and in considering such averments of the complaint and all reasonable inferences to be deduced therefrom must be accepted/taken as true. The district court not only departed from such rules and principles of construing the complaint but fashioned unsupported rules and principles of the law of the case and res judicata, in relying upon the nonpublic opinion of the California appeal's court in dismissing the complaint entirely.

Since petitioners in their complaint stated viable claims under sections 1985(2) and 1985(3), they also stated a viable claim under section 1986, and their claim for prevailing attorneys fees and other legal costs per section 1988 was more than viable and proper.

2. NO LAW OF THE CASE NOR CLAIM OR ISSUE PRECLUSIONS APPLIED TO DISMISS PER RULE 12(b)(6) PETITIONERS' COMPLAINT, WHO WERE FURTHER DENIED BOTH PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF ANY EVIDENTIARY HEARING PER FEDERAL RULES OF EVIDENCE, RULE 201, ESPECIALLY SUBPART (E).

The defendants' claims of law of the case, claim preclusion or issue preclusions, i.e., res judicata or collateral estoppel, are effirmative defenses which not only must be sufficiently plead, but the entire burden of proving each of said affirmative defenses apply as a matter of fact and law to each claim against each defendant in petitioners' grandparents' complaint. Both the district court and the Ninth Circuit not only blended and combined such affirmative defenses per said Rule 12(b)(6) motions to dismiss, but further eviscerated petitioners' rights of procedural and substantive due process per Federal Rules of Evidence, Rule 201(c), (e) and F.R.C.P., Rule 56. *Mercoid Corp. v. Mid-Continent Inv. Co.*, 320 U.S. 661, 670-71 (1944); *In re Hopkins*, 146 F.3d 729 731-32 (9th Cir. 1998); *Hutchins v. TNT/Reddaway Truck Lines, Inc.*, 939 F.Supp. 721 (N.D. Cal. 1996). See 18 Moore's Federal Practice, Sec. 132.01, 132.02, et seq. (Matthew Bender 3rd ed.).

This Court has held in *Montana v. U.S.*, 440 U.S. 147, 159, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979), citing Moore's Federal Practice, that if there are different pertinent facts in two seemingly like cases, issue preclusion, res judicata is inapplicable, in a subsequent action even raising the same legal issues. More so, where, as pled in petitioners federal complaint new evidence, facts and even intervening changes

in the law, has shown new wrongful acts by the defendants in said federal action, and where, separately, clear error has been committed in the first case or if injustice will result therefrom, plaintiff in the subsequent action is free to litigate such issues there presented. *Sea-Land Serv. v. Gaudet*, 414 U.S. 573, 593 (1974). No issues were litigated in the first action of the conspiracies among the defendants to violate petitioners' federal civil rights, no issues were litigated about the petitioners' discovery during the state action discovery of the fraud, deception and complete complicity of Beugelmans, their own discharged attorneys and the school district attorneys, in such conspiracies, such obstruction of justice and perpetration of perjury, subornation thereof as well as presentation of manufactured and false evidence. The law and intervening case decision of *Haddle, O'Neal* and others supra, *Delew v. Wagner*, etc., were all decided after the jury's verdict being overturned in said state action. See also this Court's enunciations of the law principles in *Humana, Inc. v. Forsyth*, 119 S.Ct. 710 (1999), and the Ninth Circuit's decision in *U.S. v. Frega*, 179 F.3d 793 (9th Cir. 1999).

There were serious issues of absolute lack of jurisdiction, subject matter and over the grandparents' persons of said state court judge and even the California appeals court in its decision to allow any order to be upheld of dismissal of said state action when the trial judge was not only disqualified, but pending his disqualification hearing, he made ex parte contact with the school district's attorney re: how to act while in suspended disqualification and then held a secretive hearing without notice to or the participation of the grandparents or their counsel, whereby he granted defendants' motion for a new trial and also to

dismiss the state action entirely. In doing so, said state judge further impinged upon a family court guardianship judge saying that his granting of guardianship to petitioners was based upon fraudulent evidence when in fact not only had that court the report of a family case worker and investigator who had interviewed the minor grandsons before their abduction, such grandsons stating unequivocally that they wanted to stay with and live with their grandparents, but had investigated both the grandparents and had telephone and written communications with the grandsons' father in France; such investigator as a court official and officer strongly recommended such guardianship be granted to petitioners and it was so. Moreover, no trial court judge, without any basis of affirmative defenses pled, can so nonjudicially intrude upon the lawfully and exclusive jurisdiction of said guardianship court judge and his orders. Lastly, the only person who could have had standing or capacity to so challenge or change such guardianship order was Jacky Joye and he completely defaulted his rights and remained in France, not directing his private California counsel, Jacques Beugelmans to so appear and represent him; the same Beugelmans who directed and counseled Joye to kidnap his sons and take them from any court's jurisdiction in California. Completely misstated by said state appeals' court's decision was that petitioners were not the guardians nor guardians ad litem of their minor grandsons when they were and continued to be up to such grandsons' majority. See the Ninth Circuit's decision in 1999; *Sanders v. Union Pac. R.R. Co.*, 190 F.3d 1080, 1081 (9th Cir. 1999), holding that a judge's acts of proceeding without jurisdiction, are not only "renegade ultra vires" acts but deprive such judge of any judicial immunity citing this court's decisions.

Nothing more can be egregiously unacceptable nor a blemish of improper protectionism given such state court judge's actions; then when the federal courts, try to keep from the public's knowledge and even from the bar, the fact and notoriety of judicial errors, biased jurist's mindset and the utter neglect of duty and responsibility to apply the laws and decisions fair, equally and contemporaneously, especially when the petitioners are elderly, frail and health affected individuals who can be buried or left to die along the judiciary's graveyard of misdeeds and unsupportable rulings.

No hearing was allowed nor provided, for such unpled affirmative defenses, in the district court's taking of whatever wrongful judicial notice it did of said state court's appellate decision. See also *Brock v. Williams Enterprises of Georgia, Inc.*, 832 F.2d 567, 574 (11th Cir. 1987); *Franklin County Convention Facilities Auth. v. American Premier Underwriters, Inc.*, 240 F.3d 534, 550-552 (6th Cir. 2001); 18 Moore's Federal Practice, section 132.03 (Matthew Bender, 3rd ed.). The district court's failure to comply with all standards of due process and equal protection in supposedly taking such judicial notice and granting defendants' motions for dismissal with prejudice. *Avitia v. Metro Club of Chicago*, 924 F.2d 689, 691 (7th Cir. 1991).

3. THE DISTRICT COURT AND THE NINTH CIRCUIT COURT OF APPEALS DELIBERATELY IGNORED AND FAILED, IF NOT REFUSED, TO APPLY THE CALIFORNIA LAW OF DISCOVERY OF FACTS OR THE LAST OVERT ACT DOCTRINE OF CONSPIRACY, EITHER WHICH NOT ONLY TOLLED THE ONE YEAR STATUTE OF LIMITATIONS ON PETITIONERS AND THEIR GRANDSONS' CLAIMS BUT FURTHER ESTABLISHED THE VALIDITY OF PETITIONERS' CONSPIRACY AVERMENTS OF ALL THEIR CLAIMS.

This court has held, as has the Ninth Circuit, that the applicable statute of limitations as to federal civil rights claims is the statute of limitations of the state in which such violations are alleged to have occurred. In California, such statute is one (1) year from the date of such occurrence or one (1) year from the actual date of discovery. But more important is that the California Supreme Court, in *Wyatt v. Union Mortgage Co.*, 24 C.3d 773, 782-786 (1974), held such statute of limitations never begins to run at all, when the last overt act per such alleged conspiracy has not yet occurred but is in fact alleged to still be continuing or ongoing. The *Wyatt* decision has not been overturned nor modified to alter either of said doctrines, and both applied herein to allow petitioners to pursue all their claims against Jacques Beugelmans. However, it was difficult for the district court and the Ninth Circuit to apply *Wyatt* when it has been in application for over 28 years and allowed petitioners' claims as to all other defendants as well.

CONCLUSION

This Petition for Writ of Certiorari should be granted upon all grounds, basis or points raised and those inherently included herein or part thereof.

DATED: August 13, 2002

MILAN CHEYOVICH
DIANA CHEYOVICH

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MILAN CHEYOVICH; DIANA CHEYOVICH, individually and as Court Appointed Guardian for Daniel Milan Lucien Cheyovich Joye and Nicolas Marc David Cheyovich Joye, minors, Plaintiffs-Appellants, v. SAN MARINO SCHOOL DISTRICT, JOHN BEUGELMAN, a.k.a. Jacques Beuglemans, et al., Defendants-Appellees	Nos. 00-55905 00-56937 D.C. No. CV-96-02381-HLH MEMORANDUM* (Filed Dec. 27, 2001)

Appeal from the United States District Court
for the Central District of California
Harry L. Hupp, District Judge, Presiding

Submitted December 17, 2001**

Before: SCHROEDER, Chief Judge, TROTT and PAEZ, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument, and denies appellants' request for oral argument. *See* Fed. R. App. P. 34(a)(2).

Milan Cheyovich and Diana Cheyovich appeal pro se the district court's orders dismissing for failure to state a claim their action alleging that defendants engaged in a conspiracy with their grandchildren's biological father to kidnap the grandchildren. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Monterrey Plaza Hotel, Ltd. v. Local 483*, 215 F.3d 923, 926 (9th Cir. 2000), and we affirm on the ground that the district court lacked subject matter jurisdiction, *Steel Co. v. Citizen for a Better Environment*, 532 U.S. 83, 94-95 (1998).

Despite appellants' attempts to raise claims separate from the prior state court custody action, the two are inextricably intertwined. Because federal courts do not have jurisdiction to review state court decisions, we affirm the district court's dismissal of appellants' action. *See Worldwide Church of God v. McNair*, 805 F.2d 888, 890-93 (9th Cir. 1986) (citing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983)).

We have considered appellants' remaining contentions and reject them for lack of merit. We grant appellants' motion to file a late reply brief and order that the reply brief received on April 11, 2001 be filed.

AFFIRMED.

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 00-55905
CT/AG#: CV 96-02381-HLH

MILAN CHEYOVICH; DIANA CHEYOVICH, individually and as Court Appointed Guardian for Daniel Milan Lucien Cheyovich Joye and Nicolas Marc David Cheyovich Joye, minors

Plaintiffs Appellants

v.

DAN MARINO SCHOOL DISTRICT

Defendant

and

JOHN BEUGELMAN,
aka Jacques Beuglemans

Defendant Appellee

NO. 00-56937
CT/AG#: CV 96-02381-HLH

MILAN CHEYOVICH; DIANA CHEYOVICH, individually & as Court Appointed Guardian for Daniel Milan Lucien Cheyovich Joye & Nicholas Marc David Cheyovich Joye, minors

Plaintiffs-Appellants

v.

SAN MARINO SCHOOL DISTRICT, JACKY BERNARD JOYE; JUDITH D. ANDERSON, individually dba Law Firm of Walsh & Declues

dba Law Firm of Liebman, Reiner & Walsh; MICHAEL J. DECLUES, individually dba Law Firm of Walsh & Declues dba Law Firm of Liebman, Reiner & Walsh; JAMES A. SHALVOY, individually dba Law Firm of Bigelow, Moore & Tyre; FRANKLIN T. BIGELOW, JR., individually dba Law Firm of Bigelow, Moore & Tyre; CHARLES JOHNSON, individually & an agent for Focus on the Family; MARY A. MEYE; PERTA SANTLEY

Defendants-Appellees

APPEAL FROM the United States District Court for the Central District of California, Los Angeles.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, Los Angeles, and was duly submitted.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered December 27, 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 96-2381 HLH (RMCx) Date Sept. 25, 2000

Title Cheyovich et al. v. San Marino Unified School District, et al.

DOCKET ENTRY

PRESENT

HON. HARRY L. HUPP, JUDGE

Jim Holmes
Deputy Clerk

Not Present
Cynthia L. Mizell
Court Recorder

ATTORNEYS PRESENT FOR PLAINTIFFS:

Patricia J. Berry✓

ATTORNEYS PRESENT FOR DEFENDANTS:

J. Michael DeClues
/s/ G. Wille✓
Randall A. Miller
Michael McCarthy
/s/ J. Evans
/s/ R. Jenkins✓

PROCEEDINGS: SAN MARINO SCHOOL DISTRICT, ET AL'S, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND MOTION TO STRIKE; BIGELOW MOORE & TYRE'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM; JAMES SHALVOY'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND REQUEST FOR JUDICIAL NOTICE

ORDER (also if applicable, findings and memorandum opinion):

The motions to dismiss of (1) James Shalvoy (hereafter Shalvoy) and of Franklin T. Bigelow, Jr. and Bigelow, Moore & Tyre (hereafter collectively Bigelow), and (2) San Marino Unified School District, Charles Johnson, Mary E. Meye, and Perta Stanley (hereafter collectively SMUSD), and (3) Judith Anderson and Walsh & DeClues (hereafter collectively W&D) are each granted without leave to amend and the action is dismissed against each of said defendants (without prejudice as to Bigelow and W&D and with prejudice as to SMUSD. The motions to strike are denied as moot in view of dismissal of action on the motions.

The court notes that the action has already been dismissed as to Jacques Beugelmans and no further action needs to be taken as to him.

The court further notes that no service of the summons and complaint appears to have been made as to defendant Jacky B. Joye and that he has otherwise not appeared in this action. He is dismissed from this action for failure to prosecute under FHCP 4(m).

As to the Bigelow defendants, there is no federal jurisdiction against them and they are dismissed without prejudice for lack of jurisdiction. The Bigelow defendants are alleged to have been attorneys for plaintiffs in the state court action but were dismissed as attorneys by the Cheyovichs in 1995 or 1996. They are accused of committing malpractice in their handling of the Cheyovich's state court lawsuit. This, of course, is an action arising under state law since and there is no diversity or a federal question to give this court jurisdiction. Plaintiffs argue

that the court should retain the case under the doctrine of supplemental jurisdiction (28 USC § 1367). However, the charges against the Bigelow defendants do not arise out of the same set of facts as does the lawsuit against SMUSD, a prerequisite for the exercise of supplemental jurisdiction. Further, as stated below, the action against SMUSD will be dismissed under the doctrine of res judicata, leaving no federal action for the Bigelow case to be supplemental to.

Judicial notice is taken of the pleadings and decisions in the state court action as requested. As to the SMUSD defendants, the result is the state court action is res judicata of all the claims asserted in this action. The state court action asserted violations of 42 USC § 1983 and also various state law torts. The action ended with a State Court of Appeal decision vindicating SMUSD and its employees on all grounds charged following a complete trial on the merits of the case. The branch of res judicata called "bar" prevents litigation of any of the causes of action that were raised and tried or of issues which could have been raised and tried in the state court. The opinion of the Court of Appeal leaves it clear that there is nothing that is alleged here which does not come within the scope of the state court action. There is no possible basis for amendment; thus the action against SMUSD and its employees is dismissed without leave to amend and the action dismissed against them.

The action against W&D must also be dismissed, partly on res judicata grounds insofar as a conspiracy to violate § 1983 is alleged, and partly for lack of jurisdiction insofar as state law torts are alleged. W&D were not defendants in the state court action. Therefore, res judicata could only apply if W&D were alleged to be in conspiracy

with the state actor (meaning SMUSD). In this action, they are alleged to have conspired with SMUSD to violate § 1983. The holding in the state court action that § 1983 was not violated by SMUSD renders this part of the complaint against W&D subject to the res judicata defense, since in that the state actor did not violate § 1983, or conspire to do so, any action by W&D (not a state actor) could not have been in conspiracy with SMUSD to violate the section. The other claim against W&D is a state law tort (tortious interference with custody). Since there is no defendant left with a federal claim against it (SMUSD being dismissed), the matter is dismissed for lack of federal jurisdiction under 28 USC § 1367(c)(3). The motion to dismiss as to W&D is granted without leave to amend on the conspiracy charges under § 1983 and the balance of the action is dismissed for lack of federal jurisdiction.

There being no undismissed claims, the action is dismissed by order signed and filed this date.

The status conference scheduled for this date is off calendar as moot.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHEYOVICH, et al., Plaintiffs, v. SAN MARINO SCHOOL DISTRICT, et al., Defendants.	No. CV96-2381-HLH (RMCx) ORDER DISMISSING ACTION (Filed Sep. 25, 2000)

This action is dismissed as follows:

Without Prejudice: James Shelvoy, Franklin T. Bigelow, Jr., Bigelow, Moore & Tyre, Judith Anderson, Walsh & DeClues and Jacky B. Joye;

With Prejudice: San Marino Unified School District, Charles Johnson, Mary E. Meye and Perta Stanley.

This Order is a final judgment for purposes of Fed. R. Civ. P. 54(a). It shall be entered pursuant to Fed. R. Civ. P. 58 and 79(a), and served upon the parties.

IT IS SO ORDERED.

Date: September 25, 2000.

/s/ Harry L. Hupp
HARRY L. HUPP
Senior United States
District Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MILAN CHEYOVICH; DIANA CHEYOVICH, individually and as Court Appointed Guardian for Daniel Milan Lucien Cheyovich Joye and Nicolas Marc David Cheyovich Joye, minors, Plaintiffs-Appellants, v. SAN MARINO SCHOOL DISTRICT, JOHN BEUGELMAN, a.k.a. Jacques Beugleman, et al., Defendants-Appellees	Nos. 00-55905 00-56937 D.C. No. CV-96-02381-HLH Central California ORDER (Filed May 15, 2002)

Before: SCHROEDER, Chief Judge, TROTT and PAEZ, Circuit Judges

The panel has voted to deny appellants' petition for panel rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

No further filings shall be accepted in this closed appeal.

U.S. CONST. AMENDMENT I – FREEDOM OF RELIGION, SPEECH AND PRESS; PEACEFUL ASSEMBLAGE; PETITION OF GRIEVANCES

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. AMENDMENT XIV – CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be

subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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42 U.S.C. § 1985. Conspiracy to interfere with civil rights

* * *

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or

his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

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42 U.S.C. § 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, [illegible] such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action was accrued.

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42 U.S.C. § 1988. (b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. § 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the

court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.